

HUMAN SERVICES BOARD

INTRODUCTION

The petitioner filed her appeal in March 2009. By agreement of the parties the Department conducted a Commissioner's Review of the matter resulting in a decision dated April 22, 2009. Inasmuch as the Department's review did not fully resolve the matter, the parties agreed at a telephone status conference held on May 15, 2009 that the petitioner would file a written response to the Commissioner's Review decision. The petitioner filed her arguments on June 3, 2009. Following a subsequent telephone status conference held on July 6, 2009, the Department issued a revised ruling partially in the petitioner's favor. The

following findings of fact regarding the violations that remain at issue are based on the oral representations the parties have made and on the documents they have filed to date.

FINDINGS OF FACT

1. On February 17, 2009 a Department licensing official visited the petitioner's registered family day care home. While she was there she observed two things that she and, ultimately, the Commissioner determined were violations of the Department's Family day Care Home regulations.¹

2. One of those violations relates to fire drills. During the site visit the petitioner admitted that she had not had a fire drill every month in 2008, and had not had one in January 2009. The petitioner maintains that she had misplaced her record of fire drills in 2008. She also maintains several children in the day care were sick in January 2009, and that she deemed it unwise to subject them to a fire drill during that time. The petitioner does not appear to dispute that she was aware that fire drills can be preannounced, and that the children can be dressed appropriately.

4. The second violation relates to a recliner chair that was observed to have had exposed fabric nails, which children could have reached if they climbed on the chair. The petitioner maintains that the location and design of the chair would have made it difficult (though, admittedly, not impossible) for children to have come in contact with the nails. She also states that she repaired the chair immediately following the site visit.

ORDER

The Department's decisions are affirmed.

REASONS

At the outset, it must be noted that this case does not involve a decision by the Department regarding the petitioner's day care registration. It is only whether two of the conditions noted in the Department's Field Visit Report of its inspection of the petitioner's facility on February 17, 2009 constituted "violations" of the Department's family day care home regulations. If so, a notice of that violation is listed on the Department's web site for the public's information.

¹ Two other "violations" initially cited were subsequently either reduced to the status of an "observation" or removed from the Department's

Regulation V21b of the Department's regulations provides:

Emergency Evacuation Plan: The plan, which may be preannounced, shall be practiced at least once each month.

As noted above, the petitioner does not directly dispute that she was in violation of this provision. However, it is not for any individual day care provider (nor, for that matter, the Board) to determine whether safety requirements can be waived based solely on seasonal considerations. The petitioner has made no showing that any of her children would have suffered any risk to their health if they had participated in a fire drill in January.

Regulation V10 provides:

Children in care shall be protected from any and all conditions which threaten a child's health, safety and well-being. This includes protecting children from stoves, pools, poisons, window covering pull cords, asbestos, wells, known vicious animals, medications, dust or chips from lead paint, traffic, and other hazards.

The petitioner does not appear to argue that exposed nails on furniture are not a hazard contemplated by the above regulation. Her dispute with this violation is based on her view that hazards of short duration or unlikely access should be considered *de minimus*. Parents are, of course, free to

records.

judge for themselves what constitutes unacceptable safety hazards for their children. However, it cannot be concluded that the Department is acting beyond its discretion to publicize, as a guide to *all* parents, that the petitioner's day care, on at least one occasion, was observed to have had a potentially hazardous safety condition.

Inasmuch as the Department's decisions are supported by the evidence and constitute a reasonable interpretation of its own regulations, they must be affirmed by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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